

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JASON R. ODEM, on his own behalf, and §
on behalf of those similarly situated, §
§
Plaintiff, §
§
v. § Civil Action No. 3:08-CV-1196-L
§
CENTEX HOMES, §
§
Defendant. §

ORDER

Before the court is Defendant's Motion for Summary Judgment Against Plaintiff Jason Odem, filed by Defendant Centex Homes ("Defendant") February 24, 2010. Plaintiff Jason R. Odem ("Plaintiff") filed Notice of No Opposition to Defendant's Motion for Summary Judgment on May 24, 2010. This case has been referred to Magistrate Judge Paul D. Stickney pursuant to Special Order 3-251 and the provisions of 28 U.S.C. § 636(b). The magistrate judge entered Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report") with respect to Defendant's motion on May 28, 2010. The parties have filed no objections to the Report.

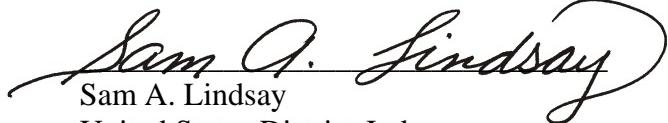
The magistrate judge recommends that the court grant in part and deny in part Defendant's motion for summary judgment. Specifically, the magistrate judge recommends that the court should apply the doctrine of judicial estoppel to Plaintiff's claims and determine that those claims are barred by judicial estoppel. The magistrate judge further recommends that the court deny Defendant's request for attorney's fees as sanctions for bringing the motion. After reviewing the magistrate judge's findings, it is apparent to the court that judicial estoppel applies in this case. Moreover, as Plaintiff has filed a notice of no opposition to Defendant's motion for summary judgment and has

not filed any objections to the magistrate judge's Report, the court is satisfied with accepting the magistrate judge's recommendation on this issue.

With respect to Defendant's request for attorney's fees as sanctions, Defendant has not provided any authority that would entitle it to attorney's fees on its motion. Although Defendant cites some case law, the court agrees with the magistrate judge that such cases are distinguishable because they primarily deal with attorney's fees for defending frivolous civil rights actions where attorney's fees are statutory. While attorney's fees are appropriate in certain of those instances, when a plaintiff's underlying claims are frivolous, unreasonable, or groundless, neither the court nor the magistrate judge have made such a finding in this case. The court again notes that Defendant makes no objection to the magistrate judge's finding on this issue. Accordingly, the court accepts the magistrate judge's recommendation and determines that Defendant's request for attorney's fees for bringing the motion for summary judgment should be denied.

Having reviewed the motion, brief, filings, Report, and applicable law, the court **determines** that the magistrate judge's findings and conclusions are correct. They are therefore **accepted** as those of the court. Accordingly, the court **grants in part and denies in part** Defendant's Motion for Summary Judgment Against Plaintiff Jason Odem. The doctrine of judicial estoppel applies to Plaintiff's claims, and they are **barred** by judicial estoppel. Defendant's request for attorney's fees for bringing its motion for summary judgment is **denied**. In accordance with Rule 58 of the Federal Rules of Civil Procedure, a judgment will issue by separate document.

It is so ordered this 14th day of June, 2010.


Sam A. Lindsay
United States District Judge